

REFERENCE TITLE: **workers' compensation; claims**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2828

Introduced by
Representative McComish

AN ACT

**AMENDING SECTIONS 23-908 AND 23-1061, ARIZONA REVISED STATUTES; RELATING TO
WORKERS' COMPENSATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-908, Arizona Revised Statutes, is amended to
3 read:

4 23-908. Injury reports by employer and physician; schedule of
5 fees; violation; classification

6 A. Every employer affected by this chapter, and every physician who
7 attends an injured employee of such employer, shall file with the commission
8 and the employer's insurance carrier from time to time a full and complete
9 report of every known injury to the employee arising out of or in the course
10 of his employment and resulting in loss of life or injury. Such report shall
11 be furnished to the commission and such insurance carrier at times and in the
12 form and detail the commission prescribes, and the report shall make special
13 answers to all questions required by the commission under its rules.

14 B. The commission shall fix a schedule of fees to be charged by
15 physicians, physical therapists or occupational therapists attending injured
16 employees and, subject to subsection C of this section, for prescription
17 medicines required to treat an injured employee under this chapter. The
18 commission shall annually review the schedule of fees.

19 C. If a schedule of fees for prescription medicines adopted pursuant
20 to subsection B of this section includes provisions regarding the use of
21 generic equivalent drugs, those provisions shall comply with section
22 32-1963.01, subsections A and C through K. If the commission considers the
23 adoption of fee schedule provisions that involve specific prices, values or
24 reimbursements for prescription drugs, the commission shall base the adoption
25 on studies or practices that are validated and accepted in the industry,
26 including the applicability of formulas that use average wholesale price,
27 plus a dispensing fee, and that have been made publicly available for at
28 least one hundred eighty days before any hearing conducted by the commission.

29 D. Notwithstanding section 12-2235, information obtained by any
30 physician or surgeon examining or treating an injured person shall not be
31 considered a privileged communication, if such information is requested by
32 interested parties for a proper understanding of the case and a determination
33 of the rights involved. THE EMPLOYER, INSURANCE CARRIER OR COMMISSION,
34 THROUGH AN AUTHORIZED REPRESENTATIVE, MAY COMMUNICATE DIRECTLY, EITHER ORALLY
35 OR IN WRITING, WITH THE PHYSICIAN OR SURGEON REGARDING TREATMENT RENDERED TO
36 THE INJURED PERSON. Hospital records of an employee concerning an industrial
37 claim shall not be considered privileged if requested by an interested party
38 in order to determine the rights involved. Medical information from any
39 source pertaining to conditions unrelated to the pending industrial claim
40 shall remain privileged. FOR THE PURPOSES OF THIS SUBSECTION, "AUTHORIZED
41 REPRESENTATIVE" MEANS AN ATTORNEY, A CLAIMS ADJUSTER OR AN EMPLOYEE OF THE
42 COMMISSION.

43 E. When an accident occurs to an employee, the employee shall
44 forthwith report the accident and the injury resulting therefrom to the
45 employer, and any physician employed by the injured employee shall forthwith

1 report the accident and the injury resulting therefrom to the employer, the
2 insurance carrier and the commission.

3 F. When an accident occurs to an employee, the employer may designate
4 in writing a physician chosen by the employer, who shall be permitted by the
5 employee, or any person in charge of the employee, to make one examination of
6 the injured employee in order to ascertain the character and extent of the
7 injury occasioned by the accident. The physician so chosen shall forthwith
8 report to the employer, the insurance carrier and the commission the
9 character and extent of the injury as ascertained by him. If the accident is
10 not reported by the employee or his physician forthwith, as required, or if
11 the injured employee or those in charge of him refuse to permit the
12 employer's physician to make the examination, and the injured employee is a
13 party to the refusal, no compensation shall be paid for the injury claimed to
14 have resulted from the accident. The commission may relieve the injured
15 person or his dependents from the loss or forfeiture of compensation if it
16 believes after investigation that the circumstances attending the failure on
17 the part of the employee or his physician to report the accident and injury
18 are such as to have excused them.

19 G. Within ten days after receiving notice of an accident, the employer
20 shall inform his insurance carrier and the commission on such forms and in
21 such manner as may be prescribed by the commission.

22 H. Immediately upon notice to the employer of an accident resulting in
23 an injury to an employee, the employer shall provide the employee with the
24 name and address of the employer's insurance carrier, the policy number and
25 the expiration date.

26 I. Any person failing or refusing to comply with this section is
27 guilty of a petty offense.

28 Sec. 2. Section 23-1061, Arizona Revised Statutes, is amended to read:

29 23-1061. Notice of accident; form of notice; claim for
30 compensation; reopening; payment of compensation

31 A. Notwithstanding section 23-908, subsection E, no claim for
32 compensation shall be valid or enforceable unless the claim is filed with the
33 commission by the employee, or if resulting in death by the parties entitled
34 to compensation, or someone on their behalf, in writing within one year after
35 the injury occurred or the right thereto accrued. The time for filing a
36 compensation claim begins to run when the injury becomes manifest or when the
37 claimant knows or in the exercise of reasonable diligence should know that
38 the claimant has sustained a compensable injury. Except as provided in
39 subsection B of this section, neither the commission nor any court shall have
40 jurisdiction to consider a claim which is not timely filed under this
41 subsection, except if the employee or other party entitled to file the claim
42 has delayed in doing so because of justifiable reliance on a material
43 representation by the commission, employer or insurance carrier or if the
44 employee or other party entitled to file the claim is insane or legally
45 incompetent or incapacitated at the time the injury occurs or the right to

1 compensation accrues or during the one-year period thereafter. If the
2 insanity or legal incompetence or incapacity occurs after the one-year period
3 has commenced, the running of the remainder of the one-year period shall be
4 suspended during the period of insanity or legal incompetence or incapacity.
5 If the employee or other party is insane or legally incompetent or
6 incapacitated when the injury occurs or the right to compensation accrues,
7 the one-year period commences to run immediately upon the termination of
8 insanity or legal incompetence or incapacity. The commission upon receiving
9 a claim shall give notice to the carrier.

10 B. Failure of an employee or any other party entitled to compensation
11 to file a claim with the commission within one year or to comply with section
12 23-908 shall not bar a claim if the insurance carrier or employer has
13 commenced payment of compensation benefits under section 23-1044, 23-1045 or
14 23-1046, except that the payments provided for by section 23-1046, subsection
15 A, paragraph 1 and section 23-1065, subsection A shall not be considered
16 compensation benefits for the purposes of this section.

17 C. If the commission receives a notification of the injury, the
18 commission shall send a claim form to the employee.

19 D. The issue of failure to file a claim must be raised at the first
20 hearing on a claim for compensation in respect to the injury or death.

21 E. Within ten days after receiving notice of an accident, the employer
22 shall inform his insurance carrier and the commission on such forms as may be
23 prescribed by the commission.

24 F. Each insurance carrier and self-insuring employer shall report to
25 the commission a notice of the first payment of compensation and shall
26 promptly report to the commission and to the employee by mail at his last
27 known address any denial of a claim, any change in the amount of compensation
28 and the termination thereof, except that claims for medical, surgical and
29 hospital benefits which are not denied shall be reported to the commission in
30 the form and manner determined by the commission. In all cases where
31 compensation is payable, the carrier or self-insuring employer shall promptly
32 determine the average monthly wage pursuant to section 23-1041. Within
33 thirty days of the payment of the first installment of compensation, the
34 carrier or self-insuring employer shall notify the employee and commission of
35 the average monthly wage of the claimant as calculated, and the basis for
36 such determination. The commission shall then make its own independent
37 determination of the average monthly wage pursuant to section 23-1041. The
38 commission shall within thirty days after receipt of such notice notify the
39 employee, employer and carrier of such determination. The amount determined
40 by the commission shall be payable retroactive to the first date of
41 entitlement. The first payment of compensation shall be accompanied by a
42 notice on a form prescribed by the commission stating the manner in which the
43 amount of compensation was determined.

1 G. Except as otherwise provided by law, the insurance carrier or
2 self-insuring employer shall process and pay compensation and provide
3 medical, surgical and hospital benefits, without the necessity for the making
4 of an award or determination by the commission.

5 H. ON A CLAIM THAT HAS BEEN PREVIOUSLY ACCEPTED, an employee may
6 reopen the ~~employee's~~ claim to secure an increase or rearrangement of
7 compensation or additional benefits by filing with the commission a petition
8 requesting the reopening of the employee's claim upon the basis of a new,
9 additional or previously undiscovered temporary or permanent condition, which
10 petition shall be accompanied by a statement from a physician setting forth
11 the physical condition of the employee relating to the claim. A CLAIM SHALL
12 NOT BE REOPENED IF THE CLAIM FOR COMPENSATION WAS PREVIOUSLY DENIED BY A
13 NOTICE OF CLAIM STATUS OR DETERMINATION BY THE COMMISSION OR IF THE NOTICE OR
14 DETERMINATION WAS ALLOWED TO BECOME FINAL AND NO EXCEPTION APPLIES UNDER
15 SECTION 23-947 EXCUSING A LATE FILING TO REQUEST A HEARING. A claim shall
16 not be reopened because of increased subjective pain if the pain is not
17 accompanied by a change in objective physical findings. A claim shall not be
18 reopened solely for additional diagnostic or investigative medical tests, but
19 expenses for any reasonable and necessary diagnostic or investigative tests
20 that are causally related to the injury shall be paid by the employer or the
21 employer's insurance carrier. Expenses for reasonable and necessary medical
22 and hospital care and laboratory work shall be paid by the employer or the
23 employer's insurance carrier if the claim is reopened as provided by law and
24 if these expenses are incurred within fifteen days of the date that the
25 petition to reopen is filed. The payment for such reasonable and necessary
26 medical, hospital and laboratory work expense shall be paid for by the
27 employer or the employer's insurance carrier if the claim is reopened as
28 provided by law and if such expenses are incurred within fifteen days of the
29 filing of the petition to reopen. Surgical benefits are not payable for any
30 period prior to the date of filing a petition to reopen, except that surgical
31 benefits are payable for a period prior to the date of filing the petition to
32 reopen not to exceed seven days if a bona fide medical emergency precludes
33 the employee from filing a petition to reopen prior to the surgery. No
34 monetary compensation is payable for any period prior to the date of filing
35 the petition to reopen.

36 I. Upon the filing of a petition to reopen a claim the commission
37 shall in writing notify the employer's insurance carrier or the self-insuring
38 employer, which shall in writing notify the commission and the employee
39 within twenty-one days after the date of such notice of its acceptance or
40 denial of the petition. The reopened claim shall be processed thereafter in
41 like manner as a new claim.

42 J. The commission shall investigate and review any claim in which it
43 appears to the commission that the claimant has not been granted the benefits
44 to which such claimant is entitled. If the commission determines that
45 payment or denial of compensation is improper in any way, it shall hold a

1 hearing pursuant to section 23-941 within sixty days after receiving notice
2 of such impropriety. ANY CLAIM FOR BENEFITS UNDER THIS SUBSECTION MUST BE
3 FILED WITH THE COMMISSION WITHIN TWO YEARS AFTER THE DATE THE CLAIMED
4 ENTITLEMENT TO BENEFITS ACCRUED.

5 K. When there is a dispute as to which employer, or insurance carrier,
6 is liable for the payment of a compensable claim, the commission ~~may~~, by
7 order, MAY designate the employer or insurance carrier which shall pay the
8 claim. Payment shall begin within fourteen days after the employer or
9 insurance carrier has been ordered by the commission to commence payment.
10 When a final determination has been made as to which employer or insurance
11 carrier is actually liable, the commission shall direct any necessary
12 monetary adjustment or reimbursement among the parties or carriers involved.

13 L. Upon application to the commission, and for good cause shown, the
14 commission may direct that a document filed as a claim for compensation
15 benefits be designated as a petition to reopen, effective as of the original
16 date of filing. In like manner upon application and good cause shown, the
17 commission may direct that a document filed as a petition to reopen be
18 designated a claim for compensation benefits, effective as of the original
19 date of filing.

20 M. If the insurance carrier or self-insurer does not issue a notice of
21 claim status denying the claim within twenty-one days from the date the
22 carrier is notified by the commission of a claim or of a petition to reopen,
23 the carrier shall pay immediately compensation as if the claim were accepted,
24 from the date the carrier is notified by the commission of a claim or
25 petition to reopen until the date upon which the carrier issues a notice of
26 claim status denying such claim. Compensation includes medical, surgical and
27 hospital benefits. This section shall not apply to cases involving seven
28 days or less of time lost from work.